

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUL 9 1992

In re Applications of )  
 )  
Central Florida Educational )  
Foundation, Inc., et al. )  
 )  
For Construction Permit for )  
a New Noncommercial )  
Educational )  
FM Station (Union Park, )  
Conway, Mims, Oak Hill and )  
Lake Mary, Florida) )

MM Docket No. 92-33  
File Nos. BPED-881207MA,  
et al.

ORIGINAL  
FILE

To: The Honorable Edward J. Kuhlmann  
Administrative Law Judge  
(Stop Code 0900)

PETITION TO INTERVENE

First Media Corporation ("FMC"), by its attorneys and pursuant to Section 1.223 of the Commission's Rules, petitions for leave to intervene in the above-captioned proceeding for a construction permit for a new noncommercial educational FM station. As set forth below, FMC requests to become a party in this proceeding in order to insure that none of the applicant's proposals will cause objectionable interference to Television Station WCPX-TV, a CBS affiliate on Channel 6, Orlando, Florida.

The applications of Central Florida Educational Foundation, Inc. ("Central"), Bible Broadcasting Network, Inc. ("BBN"), Palm Bay Public Radio, Inc., Southwest Florida Community Radio, Inc. ("Southwest"), Mims Community Radio,

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Inc. ("Mims") and Hispanic Broadcast System Inc. ("Hispanic") were designated for hearing on March 10, 1992.

In the HDO, the Chief of the Audio Services Division of the Mass Media Bureau ("Chief") evaluated the merits of the Petitions to Dismiss or Deny filed by Florida Public Radio, Inc. against the Central, BBN, Southwest and Hispanic applications. HDO, ¶4. Upon reviewing the responsive pleadings filed by Central, BBN, Southwest and Hispanic, the Chief determined that no further inquiry was warranted regarding the issue of TV Channel 6 interference affecting FMC.

On July 1, 1992, Mims filed a petition for leave to amend its application in the above-referenced proceeding.<sup>1/</sup> In its July 1, 1992 petition, Mims proposed to change its transmitter site and to move to a second adjacent channel (204C3). Mims Petition at 1. The effect of this amendment is to require Mims to comply with Section

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<sup>1/</sup> Although this Petition to Intervene is being filed later than thirty days following the publication of the HDO in the Federal Register, FMC submits that it is timely-filed pursuant to Section 1.223(c) of the Commission's Rules. This Petition to Intervene could not be filed within thirty days of the publication of the HDO in the Federal Register because the basis for this Petition -- the July 1, 1992 amendment to the Mims application -- was not filed until well after that date.

FMC learned of the filing of the Mims application on July 2, 1992. FMC has promptly prepared and filed this Petition to Intervene within a week after the Mims amendment was filed. Accordingly, FMC submits that this Petition to Intervene is timely-filed.

73.525 of the FCC's rules governing interference by new noncommercial educational FM applicants to existing Channel 6 television stations. Mims included an interference study as an exhibit to its amendment. However, as fully explained in the attached "Opposition to Petition for Leave to Amend", FMC submits that the Mims Amendment does not fully comply with Section 73.525 and fails to provide the Commission with a complete and accurate picture of the extent of the TV Channel 6 interference which would be experienced by the viewers of WCPX-TV. In compliance with Section 1.223(c) of the FCC's rules, an affidavit of a qualified radio engineer accompanies this Petition to Intervene showing the extent of the alleged interference.

Since the Mims interference study does not accurately reflect the degree of potential interference to WCPX-TV, FMC seeks to become a party to this proceeding for the limited purpose of insuring that Mims and the other applicants in the proceeding do not propose facilities which would cause objectionable interference to WCPX-TV's present and future operation.

Pursuant to the requirements of Section 1.223(c) of the FCC's Rules, attached hereto is the Affidavit of Robert K. Diehl, the Chief Engineer of Television Station WCPX-TV. Mr. Diehl's affidavit sets forth FMC's particular

interest in this proceeding and attests to the facts set forth herein.

WHEREFORE, FMC requests that the Presiding Officer grant this Petition to Intervene and make FMC a party to this proceeding.

Respectfully submitted,  
FIRST MEDIA CORPORATION

By: *Nancy L. Wolf*  
Nancy L. Wolf  
D'wana R. Speight

Its Attorneys

DOW, LOHNES & ALBERTSON  
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Suite 500  
Washington, D.C. 20037  
(202) 857-2500

July 9, 1992

**AFFIDAVIT**

City of Orlando                    )  
State of Florida                    ) SS

I, Robert K. Diehl, do hereby state under penalty of perjury that the following statements, to the best of my belief, understanding and knowledge, are true and correct:

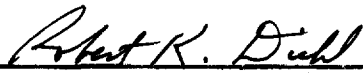
1. I am the Chief Engineer of Television Station WCPX-TV, Channel 6, Orlando, Florida. This station is licensed to First Media Corporation.

2. The Hearing Designation Order issued by the FCC on March 10, 1992 in MM Docket No. 92-33 (Union Park, Conway, Mims, Oak Hill and Lake Mary, Florida) designates for hearing six applicants for a new noncommercial educational FM station on Channel 202C2 or 202C3 in Central Florida. In that Hearing Designation Order it was stated that one of the applicants, Mims Community Radio, Inc. ("Mims"), proposed to locate its antenna on an existing tower for WPGS(AM). However, in late June, 1992, Mims filed a "Petition for Leave to Amend" proposing a transmitter site change on a new channel, 204C3, located 30 miles from WCPX-TV.

3. I learned of the filing of this amendment in early July, 1992, and immediately conducted an engineering study to determine if the Mims amendment would cause objectionable interference to WCPX-TV under Section 73.525 of the FCC's rules. The conclusion of this study is that objectionable interference will be caused to WCPX-TV. Accordingly, First Media Corporation desires to be a party to this proceeding in order to protect WCPX-TV from objectionable interference.

4. I have read the foregoing "Petition to Intervene," and it is true and accurate to the best of my knowledge, information and belief.

Further affiant sayeth not.

  
Robert K. Diehl

Subscribed and sworn to before me this  
8th day of July, 1992.

  
Notary Public

My commission expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXPIRES JAN 21, 1993  
BONDED THRU GENERAL INV. UND.

ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of FIRST MEDIA CORPORATION, licensee of Television Station WCPX-TV, Channel 6 in Orlando, Florida, in support of its Opposition to the amendment filed by Mims Community Radio, Inc. (Mims), an applicant for a new noncommercial FM station in Oak Hill, Florida.

In its original application (BPED-891127MD), Mims specified operation on Channel 202C1 from a site within 10 miles of WCPX-TV. That application became mutually exclusive with other proposals for Channel 202 in the same area, and they all are designated for hearing under MM Docket No. 92-33. Mims has filed a Petition For Leave to Amend its application to now specify operation on Channel 204C3 from a new site, located 30 miles from WCPX-TV.

In the referenced amendment, an interference study was performed to determine the WCPX-TV viewing area to be affected by the proposed noncommercial FM operation. A horizontal ERP of 0.625 kw was used in the study for the FM facility. Since the calculated area of interference to WCPX-TV was determined by Mims to contain less than 3000 people (based upon the 1986 U. S. Census update), the applicant increased the ERP by a factor of 40 and specified operation in the vertical plane only.

The interference study contains an error which underestimates the area and population which will be afflicted with WCPX-TV reception problems. In Exhibit E-7 of the aforementioned amendment, the WCPX-TV field strength is calculated based upon an assumed ERP of 100 kw. In actuality, WCPX-TV is authorized to operate with a directional antenna, and the ERP toward the

proposed FM station is significantly less than 100 kw. As a result, the predicted field strength of WCPX-TV in the affected area is less than that calculated by Mims, and the corresponding interfering signal from the FM station extends further than that reported in the amendment. In addition, the 1990 U. S. Census, which provides more recent population figures for the affected area than provided in Mims' amendment, shows a significant increase in population in the area of interest.

Therefore, Mims has understated the size of its proposed interference area by miscalculating the WCPX-TV signal strength, and has thus misrepresented the number of people within that area. Additionally, Mims violates the intent of Section 73.525(e)(2) of the FCC's Rules, as well as underestimates the affected population further, by not employing the most recently available U. S. Census data.

Lastly, Mims' ERP conversion of 0.625 kw horizontal to 25 kw vertical is predicated on the fact that WCPX-TV presently operates with an antenna which is horizontally polarized. Should WCPX-TV ever elect to operate with a circularly polarized antenna, the predicted interference from the noncommercial FM facility would increase substantially and affect a tremendous number of WCPX-TV viewers.

For the reasons stated above, it is believed that the operation proposed by Mims will have a greater deleterious effect on the viewers of WCPX-TV than stated in the Mims amendment. Therefore, it is in the public's interest that the amendment be dismissed.

A F F I D A V I T

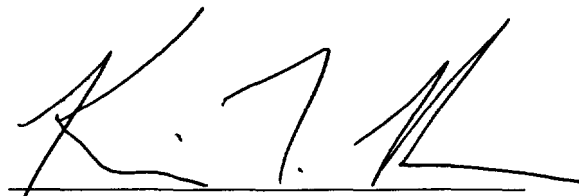
CITY OF WASHINGTON     )  
                              ) ss:  
DISTRICT OF COLUMBIA   )

Kevin T. Fisher, having been duly sworn, deposes and says that:

1. He is a broadcasting consultant practicing in the City of Washington, District of Columbia; he is an associate of the firm of Smith and Powstenko; and his qualifications are a matter of record before the Federal Communications Commission.

2. The firm of Smith and Powstenko has been retained by FIRST MEDIA CORPORATION, licensee of WCPX-TV, Channel 6 in Orlando, Florida, to prepare the attached Engineering Statement with regard to an amendment filed by one of the applicants in MM Docket No. 92-33.

3. The foregoing statements and the attached Engineering Statement, which was prepared by him, are true and correct to the best of his knowledge and belief.



KEVIN T. FISHER

Subscribed and sworn to before me this 9<sup>TH</sup> day of JULY, 1992

  
NOTARY PUBLIC, D. C.

My Commission Expires October 14, 1996

**CERTIFICATE OF SERVICE**

I, Tammi A. Foxwell, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 9th day of July, 1992, I have caused to be delivered by U.S. mail, postage-prepaid, except where otherwise noted, a copy of the foregoing "Petition to Intervene" to the following:

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\_\_\_\_\_  
Tammi A. Foxwell

\*Via Hand Delivery.